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MERCHANT & GOULD PC			BRUENJES, CHRISTOPHER P	
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1772

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/652,860	<b>Applicant(s)</b> TOMCZYK, JOHN	
	<b>Examiner</b> Christopher P. Bruenjes	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-39, 41-69 and 81-88 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 14-18, 27-39, 41-46 and 83-88 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-26, 47-69, 81 and 82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***WITHDRAWN REJECTIONS***

1. The objections to the specification and claims 21, 49, and 59 of record in the Office Action mailed February 24, 2006, Pages 2-3 Paragraphs 3-4, have been withdrawn due to Applicant's amendments in the Paper filed August 28, 2006.

2. The 35 U.S.C. 112 rejections of claims 13, 40, and 89 of record in the Office Action mailed February 24, 2006, Page 3 Paragraph 6, have been withdrawn due to Applicant's cancellation of the claims in the Paper filed August 28, 2006.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 25, 57-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Regarding claims 25 and 57, the limitation "comprising a random collection of features" renders the claim vague and indefinite. It is not clear what is considered a random collection of features. Is this referring to random properties of the surface, different sized and shaped bumps or grooves on the surface, different colors on the surface, similar bumps or grooves but dispersed randomly, or a completely uniform system of bumps or grooves that are randomly selected from other completely uniform systems? For examination purposes the limitation will be considered broad enough to include any of these random collection of features.

Claims 58-64 are rejected because they incorporate the indefinite limitation in claim 57.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United

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States and was published under Article 21(2) of such treaty in the English language.

6. Claims 19-26, 47-54, and 65-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Guest (USPN 6,490,093).

Regarding claims 19, 47, and 65, Guest anticipates a product for displaying images created with textured or roughened material such as lenticular lens material (see abstract). The product comprises a plastic display surface (reference number 12, Figure 2 and col.5, 1.41-45) and a closed surface textured or roughened insert (reference number 20, Figure 2) in abutting contact with the display surface. The insert includes a textured or roughened layer (reference number 22, Figure 2) having a first surface (the top surface of reference number 22 in Figure 2) and a second surface (the bottom surface of reference number 22 in Figure 2). The insert further comprises first and second ends for contact to one another to form a seam, and first and second edges between the first and second ends (col.9, 1.50 - col.10, 1.6). An ink layer (reference number 28, Figure 2) is bonded to the second surface of the textured or roughened layer, and a bonding and thermal protection substrate (reference number 30, Figure 2) is attached to and covering the ink layer. The product further comprises a means for retaining

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the insert in the abutting contact position on the display surface by bonding to the display surface.

Regarding claims 20, 48, and 66, the retaining means comprises a bonding interface between the substrate and material of the plastic display surface (col.13, 1.31-40).

Regarding claims 21, 49, and 67, the substrate comprises a material selected from the group consisting of polypropylene, polyester, polyvinyl chloride, polycarbonate, and APET (col.15, 1.36-40) and UV-curable coatings (col.12, 1.15-22).

Regarding claims 22, 50, and 68, the substrate has a thickness in the range of 0.0127 to 0.0762 millimeters, which are 0.5 to 3 mils (col.13, 1.25-28).

Regarding claims 23-24 and 51-52, the retaining means comprises frame members connected to the display surface and abuttingly contacting exposed edges of the insert, in which the frame members extend a predetermined retention distance onto the first surface adjacent each of the exposed edges (col.9, 1.1-26 and reference numbers 14, 16, and 18, Figure 3).

Regarding claims 25, 53, and 69, the product is a container and the display surface is an outer wall of the container (Figure 1). Furthermore, regarding claim 25, the textured or roughened surface comprises a random set or collection of features forming a lenticular lens. Note random set or

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collection of features is given its broadest reasonable interpretation, which includes a set that is selected at random.

Regarding claim 26, the insert extends along substantially the entire perimeter of the outer wall such that two side edges of the insert form a seam (col.9, 1.50 - col.10, 1.6).

Regarding claim 54, the two side edges of the insert are beveled and overlap to form a straight seam (col.9, 1.50 - col.10, 1.6).

7. Claims 19-21, 23, 25-26, 47-49, 51, 53, 65-67, 69 are rejected under 35 U.S.C. 102(e) as being anticipated by Goggins (USPN 6,635,196).

Regarding claims 19, 47, and 65, Goggins anticipates a product for displaying images created with textured or roughened material such as lenticular lens material (see abstract). The product comprises a plastic display surface (the molded plastic that fills the mold in Figures 6-8) and a closed surface textured or roughened insert (reference number 10a, Figure 5) in abutting contact with the display surface. The insert includes a textured or roughened layer (reference number 12, Figure 5) having a first surface (the outer surface of reference number 12 in Figure 5) and a second surface (the inner surface of reference number 12 in Figure 5). The insert further comprises

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first and second ends for contact to one another to form a seam, and first and second edges between the first and second ends (Figs. 12-13, col.7, 1.51-58, and col.7, 1.67 - col.8, 1.4).

Goggins teaches a seam formed by the first and second opposed ends of the textured or roughened layer because in columns 7 and 8 Goggins teaches that the layer is formed from a flat piece that is shaped to cover a cup and that reference 70 of Figures 12 and 13 represents the shaped textured or roughened layer. Reference 70 is shown in Figures 12 and 13 to be wrapped completely around the cup to form a circular cross-section.

Therefore, because the layer is formed from a flat piece it must have a seam to form a complete circle. An ink layer (reference number 14, Figure 5) is bonded to the second surface of the textured or roughened layer, and a bonding and thermal protection substrate (reference number 16 or 18, Figure 5) is attached to and covering the ink layer. The product further comprises a means for retaining the insert in the abutting contact position on the display surface by bonding to the display surface.

Regarding claims 20, 48, and 66, the retaining means comprises a bonding interface between the substrate and material of the plastic display surface (col.5, 1.56-67).



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Regarding claims 21, 49, and 67, the substrate comprises a material selected from the group consisting of vinyl plastic or opaque white ink (col.4, 1.26-30). Note an opaque white ink inherently either a solvent based coating or water-based coating since that covers these two groups of coatings includes all types of ink.

Regarding claims 23 and 51, the retaining means comprises frame members connected to the display surface and abuttingly contacting exposed edges of the insert since the insert is inserted into the mold during formation and in the embodiment in which the insert forms a portion of the outer surface of the cup such as a belly band (col.7, 1.54-57) the container would form on both the top edge and bottom edge of the insert.

Regarding claims 25, 53, and 69, the product is a container and the display surface is an outer wall of the container (Figure 10). Furthermore, regarding claim 25, the textured or roughened surface comprises a random set or collection of features forming a lenticular lens. Note random set or collection of features is given its broadest reasonable interpretation, which includes a set that is selected at random.

Regarding claim 26, the insert extends along substantially the entire perimeter of the outer wall such that two side edges of the insert form a seam (Figs. 12-13, col.7, 1.51-58, and

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col.7, 1.67 - col.8, 1.4). Note that the broadest reasonable interpretation of seam does not require that the edges forming the seam be in contact or abutting.

8. Claims 57-59 and 61-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Goggins (USPN 6,490,092).

Regarding claim 57, Goggins anticipates a product for displaying images created with textured or roughened material (see abstract) comprising a paper display surface (reference number 22, Figure 8, col.8, 1.64-67). The product further comprises a closed-surface textured or roughened insert (reference number 30, Figure 6) maintained in position adjacent the paper display surface. The insert includes a textured or roughened layer (reference number 28, Figure 8) having a first surface (the top surface of reference number 28, Figure 8) and a second surface (reference number 28a, Figure 8), and an ink layer (reference number 40, Figure 8) bonded to the second surface of the textured or roughened layer. The first surface of the insert comprises a random collection of features forming a lenticular lens. Note random set or collection of features is given its broadest reasonable interpretation, which includes a set that is selected at random. The insert further comprises a

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bonding and thermal protection substrate (reference number 42, Figure 8) attached to the ink layer.

Regarding claim 58, the sleeve is maintained in position adjacent the paper surface by an adhesive (reference number 44, Figure 8) between the substrate and the paper display surface.

Regarding claim 59, the substrate comprises material such as vinyl plastic or opaque, white ink, which is inherently a solvent-based coating or water-based coating since all inks fall into one of those categories.

Regarding claim 61, the product is a container and the display surface is an outer wall of the container (Figure 6 and col.8, 1.3-20).

Regarding claim 62, the two side edges of the insert form a straight seam (Figure 6).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 54-56 and 81-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goggins (USPN 6,635,196).

Regarding claims 54-56, Goggins teaches all that is claimed in claim 47 as shown above.

Goggins fails to teach the shape of the seam. However, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that any known shape for the seam would be used to form the seam including a straight seam, sinusoidal seam or zig-zag seam, depending on the intended end result and appearance of the finished article, absent the showing of unexpected result.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select a straight seam, sinusoidal seam, or zig-zag seam for the implicit seam of Goggins depending on the intended end

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result and appearance of the finished article, absent the showing of unexpected result.

Regarding claims 81-82, Goggins teaches an integrally formed closed surface textured or roughened sleeve (reference number 10a) comprises a textured or roughened layer (reference number 12, Figure 2c) comprising a collection of features on an outer face of the layer and an inner face opposed to the collection of features. The sleeve further comprises an outer bonding layer (reference number 20, Figure 2c) having an outer face adjacent the inner face of the textured layer and an ink layer (reference number 14, Figure 2c) having an outer face adjacent the inner face of the outer bonding layer, and the size and features of the textured layer are coordinated with the image layer since the sleeve forms a lenticular lens material. The sleeve further comprises a paper core layer (reference number 22, Figure 2c and col.4, 1.55-60) having an outer face adjacent the inner face of the ink layer and an inner bonding layer having an outer face adjacent the inner face of the paper core for bonding the paper substrate to the molten plastic forming the container.

Goggins fails to teach the sleeve further comprising a clear core layer in the same embodiment as all of the other layers. However, Goggins teaches in an additional embodiment of

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Figure 2b that a clear core layer (reference number 16, Figure 2b) is added to the lenticular lens sleeve of Goggins between the textured layer and image layer in order to provide a special effect or enhance or provide contrast for the image (col.4, 1.25-45). One of ordinary skill in the art would have recognized that Figures 2b and 2c are used as examples to show the many different components that can be added to the sleeve of Goggins and therefore it would have been obvious to combine the components for particular purposes.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add the clear core layer of the embodiment of Figure 2b to the embodiment of Figure 2c, in order to provide a special effect or enhance or provide contrast for the image, as taught by Goggins in the embodiment of Figure 2b.

12. Claims 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guest (USPN 6,490,093).

Guest teaches all that is claimed in claim 47 and teaches that the two side edges of the insert form a straight seam having beveled overlapped edges, but fails to teach the seam is sinusoidal or zig-zag. However, Guest teaches that in addition to the straight seam taught in Figure 1, the side edges of the

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insert are formed from a large number of other interweaving shapes and mating techniques to obtain the beneficial features of the container, which is to overcome the weakness inherent in a butt joint between the side edges of the insert including a "zipper" like structure (col.9, 1.59 - col.10, 1.1-6).

Therefore, it would have been obvious to one having ordinary skill in the art that any interweaving shape seams would be used to form the seam between the side edges of the insert in order to overcome the weakness of a butt joint, as taught by Guest.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select a sinusoidal seam or zig-zag seam as the seam in Guest since both seams are interweaving shapes and would therefore overcome the weakness of a butt joint, as taught by Guest, and since the specific shape would be determined by one of ordinary skill depending on the intended end appearance of the finished product, absent the showing of unexpected result.

13. Claims 60 and 63-64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goggins (USPN 6,490,092) in view of Guest (USPN 6,490,093).

Regarding claim 60, Goggins teaches all that is claimed in claim 57 but fails to teach the thickness of the substrate

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layer. However, Guest teaches that substrates of ink or plastic on the backside of a lenticular lens sleeve molded to a container has a thickness in the range of 0.5 mils to 3 mils (col.12, 1.24-27 and col.13, 1.25-30) and that the exact thickness is determined based on the intended end result of the article. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that the thickness of the substrate of a lenticular lens sleeve should be determined by one of ordinary skill in the art based on the intended end result of the article and that a typical range is within 0.5 mils and 3 mils, as taught by Guest.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select the thickness of the substrate layer of Goggins in the range between 0.5 mils and 3 mils since it is a typical range for a substrate for used for the same purpose as Goggins and since one of ordinary skill in the art would select the thickness desired based on the intended end result of the article, as taught by Guest.

Regarding claims 63-64, Goggins teaches all that is claimed in claim 57 and teaches that the two side edges of the insert form a seam (Figure 6). Goggins fails to teach that the seam is a sinusoidal or zig-zag seam. However, Guest teaches that in



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addition to a straight seam, interweaving shaped seams and mating techniques are used to bring the two side edges of the insert together to form the sleeve around the container, in order to overcome the weakness inherent in a typical butt joint (col.10, 1.1-6). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that other shaped seams are used in place of straight seam joints in order to form an interweaving connection that is inherently stronger than a typical straight seam, as taught by Guest.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the seam of Goggins having an interweaving shape rather than a straight seam in order to form a stronger seam, and that sinusoidal or zig-zag shaped seams would be selected as interweaving shapes depending on the intended end appearance of the finished product, absent the showing of unexpected result.

#### ***Response to Arguments***

14. Applicant's arguments regarding the objections and the 35 U.S.C. 112 rejections of record have been considered but are moot since the rejections and objections have been withdrawn.

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15. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 19-26, 47-54, and 65-69 as anticipated by Guest have been fully considered but they are not persuasive.

In response to Applicant's argument that Guest fails to teach the insert having first and second ends contacting one another to form a seam, although the illustrated embodiments do not teach ends of the insert contacting each other, Guest further teaches other embodiments not illustrated in which the ends are in contact with each other (col.9, 1.50 - col.10, 1.6).

16. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 19-21, 23, 25-26, 47-49, 51, 53, 65-67, and 69 as anticipated by Goggins '196 have been fully considered but they are not persuasive.

In response to Applicant's argument that Goggins '196 fails to teach the insert having first and second ends contacting one another to form a seam, when Goggins '196 is read as a whole it is apparent that the first and second ends of the insert are contacting one another to form a seam. In Goggins '196 the insert is represented by reference number 70, which in Figures 12 and 13 wrap completely around the cup or container to form a complete circle. Goggins '196 goes on to teach in column 7, line 41 - col.8, 1.4 the insert represented by reference number

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70 in Figures 12 and 13 is formed from a flat piece that is shaped to accommodate the curved surface of the cup. Therefore, because the insert forms a complete circle and is formed from a flat piece it must have first and second ends that contact to form a seam.

17. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 57-59 and 61-62 as anticipated by Goggins '092 have been fully considered but they are not persuasive.

In response to Applicant's argument that Goggins '092 fail to teach that the first surface of the insert comprises a random collection of features, random collection of features is given its broadest reasonable interpretation. The broadest reasonable interpretation includes a collection that is selected at random. In this case, the lenticular lens selected is randomly selected so the collection of lenses or features is a random collection of lenses or features.

18. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 54-56 and 81-82 over Goggins '196 have been fully considered but they are not persuasive.

In response to Applicant's argument that Goggins '196 fails to teach the relationship of the ends of the insert when formed

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into a final product, Goggins illustrates in Figures 12 and 13 the insert represented by reference number 70 is completely circular so the ends of the flat piece must form a seam.

In response to Applicant's argument that the mere disclosure of one of the layers claimed is not a general disclosure of the other layers, Goggins '196 teach two embodiments represented by Figures 2b and 2c respectively and the two embodiments combined teach all of the limitations of claims 81 and 82 as described above.

19. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 55-56 over Guest have been fully considered but they are not persuasive. Applicant has relied on arguments regarding claim 47, which are answered above.

20. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 60 and 63-64 over Goggins '092 have been fully considered but they are not persuasive. Applicant has relied on arguments regarding claim 57, which are answered above.

### ***Conclusion***

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21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be

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reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB *CPB*  
October 7, 2006

*Alicia Chevalier*  
ALICIA CHEVALIER  
PRIMARY EXAMINER  
PRIMARY EXAMINER